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Court No. - 9

Case :- CRIMINAL APPEAL No. - 605 of 2015

Appellant :- Mohammad Tariq Qashmi

Respondent :- State of U.P.

Counsel for Appellant :- Ishan Baghel, Atul Benjamin Solomon, Sajeet Singh

Counsel for Respondent :- G A

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Mrs. Saroj Yadav, J.

(Crl. Misc. Bail Application No.50997 of 2015)

Heard Shri I.B.Singh, learned Senior Advocate, assisted by Shri Ishan Baghel and Shri Sajeet Kumar Singh, learned counsel for the applicant/ appellant and Shri Umesh Verma, learned A.G.A.

This is the first bail application on behalf of the appellant-applicant who is convicted and sentenced in Sessions Trial No.310 of 2008 arising out of Crime No.1891 of 2007, under Sections 4 and 5 of the Explosive Substances Act, under Sections 18, 20 and 23 of the Unlawful Activities (Prevention) Act, Sections 121-A, 353 I.P.C. Police Station Kotwali Nagar, District Barabanki. The applicant/ appellant has been sentenced to undergo life imprisonment under Section 4 and 5 of the Explosive Substances Act. The applicant/ appellant has been further convicted under Sections 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to undergo rigorous life imprisonment with a fine of Rs.50,000/-, Rs.50,000/- and Rs.50,000/-. The applicant/ appellant has further been convicted under Sections 121-A and

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353 I.P.C. to further undergo two years' rigorous imprisonment. In default of payment of fine, to further undergo ten months' additional simple sentence. The sentence of rigorous imprisonment is to run concurrently.

Threefold arguments have been put forth by learned Senior Advocate appearing for the applicant/appellant for grant of bail.

It is firstly argued that the present applicant/appellant has falsely been implicated in the present case who was picked up from his residence by the police on 12.12.2007 whereafter a raid was conducted at his residential place but he was shown to have been possessed with 1.25 Kg. of RDX and three detonators, besides one receipt as well as a sum of Rs.300/- outside the premise of the Barabanki Railway station when on the basis of a secret information, he was allegedly spotted and the aforesaid explosive substance was recovered from him. This recovery according to learned Senior Advocate appearing for the applicant/appellant was planted and has not been actually made by following the due procedure under law and is not independently witnessed, hence it violates the appellant's right under Article 21 of the Constitution of India.

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The second submission put forth by learned Senior Advocate for the applicant/ appellant is to the effect that even if the recovery of any explosive substance was made from the appellant, the same ought not to have been destroyed prematurely. Non-production of recovered explosive before the competent magistrate or judicial magistrate of the area and the same not having been subjected to a complete executive process authenticating the valid recovery, the permission to proceed for trial under Section 7 of the Explosive Substances Act, 1908 is clearly erroneous and without authority of law.

Thirdly, the permission for destroying the explosive substances was obtained from competent authority after nearly a month without the same having been produced before the competent/ judicial magistrate or the District Magistrate who accorded permission for trial without actually verifying the recovery of the explosive substance. It is also argued that the trial of the applicant/ appellant was conducted merely on the basis of recovery and the same was not admittedly connected to any other offence involving the appellant's complicity who has no past criminal antecedents. The appellant is stated to have already served out the sentence for about of 16 years.

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Learned A.G.A. has opposed the prayer for bail however serving out the sentence for about 16 years by the appellant is not controverted. The fact of absence of past criminal history is also not disputed. However, it is pointed out that the recovery from the appellant was of a highly dangerous substance of which no common man agreed to become a witness, therefore, the oral testimony of the police personnel being admissible has rightly been relied upon. On the aspect of production of the recovered substance before the magistrate, it is submitted that the same is not mandatory.

Learned A.G.A. has also submitted that a sovereign act is not open to doubt when it involves a sensitive issue of endangering human life or property of the State.

Insofar as the case at hand is concerned, the trial has proceeded merely on the basis of recovery and the said recovery has not been connected to any offence by the prosecution, therefore the case at hand is independent of any past attributes against the appellant who has already served out the sentence for about 16 years. That apart, even if it is assumed that the sovereign act is immune from doubt, the mandate of procedure where it involves the rights under Article 21 of the Constitution of India, the procedure must be

fairly followed.

Since the ground raised by the applicant/ appellant on the aspect of recovery of explosive substance requires consideration and the appellant has already served out the sentence for about 16 years, *prima facie*, a case for grant of bail is made out.

Considering all the facts and circumstances of the case, it appears just to enlarge the convict/appellant on bail.

Let the applicant/ appellant - **Mohammad Tariq Qashmi** be released on bail in Sessions Trial No.310 of 2008 arising out of Case Crime No.1891 of 2007 (supra) during the pendency of appeal on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to deposit of entire amount of fine imposed on him at the time of his release and shall apprise the local police station about his whereabouts and shall surrender his passport obtained, if any.

On acceptance of bail bonds and personal bonds, the lower court shall transmit photostat copies thereof to this Court for being kept on record.

List in due course.

(Mrs. Saroj Yadav, J.) (A.R. Masoodi, J.)

Order Date :- 23.3.2023/Shukla